

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SHARON HULIHAN,

Plaintiff,

vs.

REGIONAL TRANSPORTATION COMMISSION
 OF SOUTHERN NEVADA, *et al.*,

Defendants.

2:09-CV-1096 ECR-RJJ

ORDER

(Motion to Cont. ENE - Dkt. #42)

Before the court is Defendants' Motion to Continue Early Neutral Evaluation scheduled for July 13, 2010 (Dkt. #42) filed July 8, 2010.

On January 27, 2010, Defendants filed a Motion to Consolidate this case with Case No. 2:09-cv-1987-ECR-RJJ (Dkt. #18). On February 16, 2010 the assigned Magistrate Judge, The Honorable Robert J. Johnston, denied the parties' stipulated Discovery Plan and Scheduling Order, and entered a Scheduling Order (Dkt. #19) establishing a May 28, 2010 discovery cutoff, a June 28, 2010 deadline for filing dispositive motions, and also entered an order (Dkt. #20) referring this case to the Early Neutral Evaluation program to the undersigned. Although this is not an employment action and subject to the court's Early Neutral Evaluation program, the undersigned entered an order (Dkt. #22) February 23, 2010 scheduling a settlement conference for March 11, 2010. On the date the settlement conference was scheduled, the court received communications from the Plaintiff indicating that she had been hospitalized. The court, therefore, vacated the settlement conference, and set a status conference for March 22, 2010. *See* Minute Order in Chambers, Dkt. #30. Thereafter, the District Judge entered an order (Dkt. #31) consolidating this case with Case No. 2:09-cv-1987.

At the status conference on March 22, 2010, the court advised counsel for the Defendants that the Confidential Statement submitted did not contain the information required by the court's order. The

1 court, therefore, required defense counsel to supplement their Confidential Statement to correct the
2 deficiencies noted in open court, denied Defendants' Motion for an Exception to the Personal
3 Attendance Requirement, and required the parties to meet and confer to find mutually acceptable dates
4 to continue the settlement conference. The settlement/ENE conference was re-set for April 1, 2010.

5 Although the court required a representative of Galligher Basset to be present at the settlement
6 conference, a representative of Galligher Basset did not appear at the settlement/ ENE conference.
7 Rather, an adjuster with Crawford & Co. appeared with pre-set authority. The court spent
8 approximately three hours conducting the conference. During the conference, it was clear that defense
9 counsel and the insurer's representative was not aware of key factual information documented in
10 Defendants' own records, and that the adjuster for Crawford & Co., who appeared with pre-set
11 authority, was provided with materially incorrect information concerning the underlying factual bases of
12 Plaintiff's claims in both cases. Although the parties exchanged offers and counter-offers, the
13 conference concluded after approximately three hours because the insurer's representative had limited
14 settlement authority based on incorrect factual information that she had been provided before the
15 conference. As a result, the court continued the conference until April 26, 2010 to allow defense
16 counsel and its insurance company additional time to review Defendants' own records, evaluate the
17 Defendants' liability exposure, and consider additional settlement authority.

18 The Plaintiff's deposition was taken April 23, 2010. During the deposition, Plaintiff and
19 opposing counsel contacted chambers and requested a conference call with the undersigned to discuss
20 the upcoming April 26, 2010 conference. Both sides requested that the court continue the conference
21 approximately sixty days to enable the Defendants to obtain discovery directly from Medicare
22 concerning its liens. Plaintiff agreed to execute a Medicare Authorization form at her deposition, and
23 did so shortly thereafter. However, counsel for Defendants represents that on July 1, 2010, in
24 anticipation of the July 13, 2010 conference, counsel called Medicare to ascertain the status of
25 obtaining lien information. The person with whom she spoke ultimately indicated Medicare had
26 received signed authorizations, but had not yet initiated their investigation because separate
27 authorization forms were required for each of the two incidents involved in these two complaints.
28 Counsel for Defendants prepared new medical authorizations, mailed them to Ms. Hulihan July 2, 2010,

1 and confirmed that she had received them and would sign and return them. Defendants anticipate that
 2 an additional forty-five to sixty days from receipt of the Medicare Authorization forms will be needed
 3 to obtain information concerning the lien amounts. Defendants assert that the missing Medicare lien
 4 information is likely to be a serious obstacle to settlement. Accordingly, this motion was filed to
 5 determine whether the court wished to proceed with the continued settlement conference, or re-schedule
 6 it for a later time. Defendants suggest re-scheduling the settlement/ENE conference at the end of
 7 August or beginning of September.

8 The undersigned agreed to conduct a settlement/ENE conference in both of these consolidated
 9 cases, although it is not an employment action and subject to the court's ENE program. On the same
 10 day the presiding Magistrate Judge referred the matter to me, he also entered a Discovery Plan and
 11 Scheduling Order establishing case management deadlines which have not been extended. The
 12 discovery cutoff has run and the deadline for filing dispositive motions has run. Defendants filed a
 13 Motion for Summary Judgment (Dkt. 40) on June 28, 2010. The time for Plaintiff's response has not
 14 yet run. Plaintiff sent the court a courtesy copy of a letter to opposing counsel expressing her dismay at
 15 defense counsel's conduct, anger with the position taken by Defendants in the Motion for Summary
 16 Judgment, and rejecting Defendants' last settlement proposal. Under these circumstances, the
 17 undersigned concludes that re-setting the matter yet again for a settlement/ENE conference is unlikely
 18 to be productive. After the Motion for Summary Judgment is decided, the parties will be required to
 19 submit a Joint Pretrial Order within thirty days as to any claim(s) which survives summary judgment.
 20 The matter will then automatically be referred to the presiding Magistrate Judge to conduct a settlement
 21 conference. For all of these reasons,

22 IT IS ORDERED that:

- 23 1. Defendants' Motion to Continue (Dkt. #42) is **DENIED**.
- 24 2. The settlement/ENE Conference that is scheduled for July 13, 2010 is **VACATED** and
 25 will not be re-set.

26 Dated this 9th day of July, 2010.

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 28 PEGGY A. BEN
 UNITED STATES MAGISTRATE JUDGE